

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

| | | |
|--------------------------------|---|------------------------|
| JUAN JOHNSON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 05 C 1042 |
| |) | |
| REYNALDO GUEVARA, and the CITY |) | Judge Grady |
| OF CHICAGO, |) | Magistrate Judge Mason |
| |) | |
| Defendants. |) | |

DEFENDANTS' MOTION IN LIMINE NO. 12

**DEFENDANTS' MOTION IN LIMINE TO BAR ANY ARGUMENT REGARDING
MISCONDUCT OF "OTHER UNKNOWN OFFICERS OR EMPLOYEES"**

Defendants City of Chicago and Reynaldo Guevara, by their attorneys, James G. Sotos and Elizabeth A. Ekl of James G. Sotos & Associates, Ltd., move this Honorable Court, *in limine*, to bar any argument regarding misconduct of “other unknown officers” at trial as Defendant Guevara cannot be made accountable for the actions of other unidentified individuals.

Plaintiff’s Amended Complaint includes allegations against “other unknown police officers” or “other unknown employees” in alleging violations of Plaintiff’s due process rights.¹ (See generally Dkt. 78, ¶¶ 7, 19-20, 23, 26-30.) However, Plaintiff to date has not advanced any claims against “unknown officers or employees.” Indeed, the only individual defendant in the instant matter is Defendant Guevara, and there are no claims against any other defendant to be decided at this trial. Therefore, any evidence that “other unknown officers or employees” engaged in misconduct in relation to Plaintiff’s arrest and conviction is irrelevant to Plaintiff’s claims against Defendant Guevara. *See* Fed. R. Evid. 801, 802. Moreover, there is a substantial

¹ Plaintiff’s *Monell* claim also includes references to “unknown” persons. However, the *Monell* claim was bifurcated (Dkt. # 105) and as such is not at issue in this motion.

risk of prejudice to Defendant Guevara if Plaintiff is allowed to attempt to saddle him with liability for the alleged acts of unknown persons and, as such, any reference or argument should be barred by Federal Rule of Evidence 403.

Not only is barring reference of wrongdoing by unknown and unidentified persons supported by the Federal Rules of Evidence, it is required by well-established case law. Given the danger of jury confusion regarding who is liable for any damage to Plaintiff, it is essential that Defendant Guevara be tried only on the basis of his own alleged wrongdoing. Indeed, liability under 42 U.S.C § 1983 is predicated upon personal responsibility. *Starzinski v. City of Elkhart*, 87 F.3d 872, 880 (7th Cir. 1996); *Schultz v. Baumgart*, 738 F.2d 231, 238 (7th Cir. 1984). The Seventh Circuit has firmly established that in order for liability to attach in a civil rights action, the plaintiff must prove that the defendant personally participated in or caused the constitutional deprivation. *Alejo v. Heller*, 328 F.3d 930, 936 (7th Cir. 2003); *Starzinski*, 87 F.3d at 879; *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983).

Here, the only individual defendant is Defendant Guevara, and, while he may be liable for any constitutional deprivation he caused Plaintiff, he cannot be responsible for those allegedly caused by others. The evidence in this case will show that Defendant Guevara was a gang crimes specialist at the time of the homicide investigation which led to Plaintiff's arrest and, as such, had a limited role in the investigation. He was not present at the scene, did not interview Plaintiff and did not have any supervisory responsibilities. If Plaintiff is allowed to argue to the jury, or elicit through testimony, allegations against others unknown persons, the jury may be prone to assign the liability for the actions of others onto Guevara. Therefore, in order to avoid

such an outcome, all references to any other misconduct, by any other persons associated with the Chicago Police Department, or the City of Chicago, must be barred.

Wherefore, Defendants respectfully request this Honorable Court grant this motion and bar any reference or argument by Plaintiff at trial to any wrongdoing by any unknown persons associated with the Chicago Police Department or the City of Chicago.

Dated: April 23, 2009

By: /s Elizabeth A. Ekl
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CERTIFICATE OF SERVICE

I hereby certify, under penalties of perjury pursuant to 28 U.S.C.A. § 1746, that on **April 23, 2009**, I electronically filed the Foregoing **Defendants' Motion in Limine to Bar Any Argument Regarding Misconduct of "Other Unknown Officers or Employees"** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record: See Attached Service List.

RESPECTFULLY SUBMITTED,

/s Elizabeth A. Ekl

ELIZABETH A. EKL

One of the Attorneys for Defendants City of Chicago and Reynaldo Guevara

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